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UNITED STATES BANKRUPTCY COURT

DIVISION OF
OIL, GAS AND MINING

FOR THE DISTRICT OF COLORADO

In re:

NORTH LILY MINING COMPANY, a Utah
corporation,
EIN: 87-0159350

Debtor.

)
) Case No. 01-23068-EEB

)
) Chapter 11

)
)
)
) Case No. 01-23069-DEC

XERES TINTIC, LLC,
EIN: 84-1528808

Debtor.

)
) Chapter 11

)
) Jointly Administered Under
) Case No. 23068-EEB

MOTION FOR ORDER AUTHORIZING 2004 EXAMINATION

The Debtors, North Lily Mining Company ("North Lily"), and Xeres Tintic, LLC ("Xeres") (collectively the "Debtors"), by and through their attorneys Kutner Miller Kearns, P.C. move the Court pursuant to Bankruptcy Rule 2004 to authorize the Debtor to examine Old West Annuity and Life Insurance Company ("Old West"), and as grounds therefor states as follows:

1. The Debtors each filed for relief under Chapter 11 of the Bankruptcy Code on September 6, 2001, and the Debtors remain a Debtors-in-Possession. The Debtors' cases are administratively joined.
2. The Debtors entered into a Note and Security Agreement with Old West in the amount of \$505,000 on December 29, 2000 ("Note"). This Note was originally secured by 2,320 acres of Xeres real property, and co-signed by North Lily in an unsecured capacity. The Debtors were past due on their April, 2001 monthly payment and Old West accelerated the Note a few months later. The Debtors' inability to pay the accelerated Note, combined with other issues, was the final straw that led the Debtors to file their voluntary petitions.
3. Pursuant to Court Order, the Debtors have sold portions of their real property holdings for the benefit of the estate. In the process, certain secured creditors claims were paid in part or in full, depending on the parcels sold and the relevant encumbrances.

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4. As of July 31, 2002, Old West already received \$344,215 from the sale of property encumbered by its lien and retains a lien on the remaining 1,400 acres of land.

5. The Debtors are uncertain as to the proper payoff amount due to Old West since Old West has asserted miscellaneous closing costs, administrative fees, and default interest. Old West claims the payoff amount on its loan to be \$371,000, but has not supported this figure with proper complete documentation or explanation. The Debtors have unsuccessfully requested such information from Old West.

6. Pursuant to Bankruptcy Rule 2004, the Debtors are entitled to examine an entity with respect to the "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or the debtor's right to a discharge." Furthermore the Debtors may examine the entity with respect to "the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the Debtor for purposes of consummating a plan . . . and any other matter relevant to the case or to the formulation of a plan." Bankruptcy Rule 2004(b).

7. The Debtors would like to examine Old West pursuant to Bankruptcy Rule 2004 for numerous reasons which fall under the scope of an appropriate Rule 2004 examination. The amount of the secured claim payable to Old West would impact the Debtors and their reorganization effort. The Debtors have a right and duty to all unsecured creditors in this case to determine the correct pay off amount. Overpayment to Old West will ultimately result in a reduction of funds to unsecured creditors. Due to Old West's refusal to voluntarily provide the Debtors with the complete substance of their calculations, the only way the Debtor is able to obtain such information is through an examination of Old West.

8. In connection with the Old West examination, the Debtor believes that it is necessary to compel Old West to produce various documents concerning Note, including but not limited to related correspondence, notes, memoranda, letters, records and documents substantiating its requested pay off amount. Therefore, the Debtors request entry of an Order authorizing the Debtors to compel Old West to produce documentary evidence in connection with the 2004 examination. Bankruptcy Rule 2004(c). The documents, which will be requested for production, are set forth in Exhibit A to this Motion.

WHEREFORE, the Debtors pray that the Court make and enter an Order authorizing the Debtors to examine Old West Annuity and Life Insurance Company pursuant to Bankruptcy Rule 2004, to compel the production of documentary evidence in connection with such examination, and for such further and additional relief as to the Court may appear proper.

Dated: November 21, 2002.

Respectfully submitted,

By: _____



Lee M. Kutner, #10966

Jenny M.F. Fujii, #30091

KUTNER MILLER KEARNS, P.C.

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EXHIBIT A

All documents concerning the Note and Security Agreement dated December 29, 2000, including but not limited to correspondence, notes, memoranda, letters, email, records, and calculations substantiating the remaining debt owed by North Lily Mining Company and Xeres Tintic, Inc. to Old West Annuity and Life Insurance Company.

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)	
<u>Debtor.</u>)	Case No. 01-23069-DEC
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EIN: 84-1528808)	
)	
Debtor.)	Jointly Administered Under
)	Case No. 23068-EEB

**ORDER AUTHORIZING 2004 EXAMINATION OF
OLD WEST ANNUITY AND LIFE INSURANCE COMPANY**

Upon consideration of the Motion for Examination of Old West Annuity and Life Insurance Company pursuant to Fed. R. Bankr. P. 2004, the Court having considered the Motion and good cause being shown therefor, hereby

ORDERS:

1. That the Debtor is authorized to examine Old West Annuity and Life Insurance Company who is ordered to appear for examination pursuant to Bankruptcy Rule 2004 by Kutner Miller Kearns, P.C., counsel for the Debtor, within 20 days of the date of this Order, or such other time as may be agreed upon by the parties at the offices of Kutner Miller Kearns, P.C., 303 East 17th Avenue, Suite 500, Denver, Colorado 80203.
2. That the examining party is authorized to issue a Subpoena Duces Tecum to the examinee requiring the examinee to produce at the time of the examination such books, records and/or documents as are set forth in Exhibit A to the Motion and which will be specified in the Subpoena Duces Tecum on the date set forth in that Subpoena.

DONE and entered this _____ day of _____, 2002 at Denver, Colorado.

Judge Elizabeth E. Brown
United States Bankruptcy Judge